

UNITED STATES BANKRUPTCY COURT
DISTRICT OF MINNESOTA

In re:

Case No. 04-33702-GFK
Chapter 13

Ernest Martin Raehsler, Sr. and Velinda Alice Raehsler,

Debtor(s).

OBJECTION TO CONFIRMATION

TO: Debtor(s) and Attorney for Debtor(s); Jasmine Keller, Chapter 13 Trustee; U.S. Trustee; and other parties in interest.

1. Wells Fargo Financial Acceptance, a secured creditor of Debtor(s), by its undersigned attorney, makes this objection to the confirmation of the proposed plan of the Debtor(s).

2. This objection is filed pursuant to Fed. R. Bankr. P. 3020(b) and Wells Fargo Financial Acceptance requests this Court to enter an order denying confirmation of Debtor's proposed Chapter 13 plan (the "Plan"). This Court has jurisdiction over this motion pursuant to 28 U.S.C. Sec. 1334(a) and 157(a), 11 U.S.C. §1325 and applicable rules. This is a core proceeding.

3. Hearing on confirmation of the Plan is scheduled for **10:30 am on Thursday, August 26, 2004**, before the Honorable Gregory F. Kishel, in Courtroom No. 228B, U.S. Federal Courthouse, 316 North Robert Street, St. Paul, Minnesota 55101, or as soon thereafter as counsel can be heard.

4. The petition commencing this Chapter 13 case was filed on June 23, 2004 and the case is now pending in this Court.

5. Wells Fargo Financial Acceptance holds a valid, perfected interest in a 2004 Ford Taurus, vehicle identification number 1FAFP53U64G124441 (the "Vehicle"). The value of the Vehicle is \$20,335.00.

6. Copies of Wells Fargo Financial Acceptance's agreement with Debtor(s) (the "Contract") and evidence of perfection of Wells Fargo Financial Acceptance's interest in the Vehicle are attached hereto as Exhibits A and B and incorporated herein by reference.

7. The Vehicle was purchased approximately 4 months before the Chapter 13 filing. The balance due to Wells Fargo Financial Acceptance as of the petition date totals \$19,604.94 together with interest accruing at the contract rate of 17.9%. The fair market value of the Vehicle is \$20,335.00. Accordingly, the claim of Wells Fargo Financial Acceptance should be treated as secured to the extent of \$19,604.94 – plus the costs of this objection to confirmation of \$225.00 – resulting in a secured claim of \$19,829.94.

8. The Plan, however, provides for (i) Wells Fargo Financial Acceptance's secured claim of \$14,000 with interest accruing at 8%; (ii) total payment on Wells Fargo Financial Acceptance's secured claim of \$16,929.85; and (iii) monthly payments of \$125.00 commencing in month 3 for 8 months and \$396.25 commencing in month 11 for 41 months.

9. The Plan fails to satisfy Wells Fargo Financial Acceptance's secured claim plus interest utilizing the payments set forth by Debtor(s). An amortization of the proposed payments is attached hereto.

10. Wells Fargo Financial Acceptance submits that the Plan is not filed in good faith as Debtor(s) purchased this Vehicle approximately 4 months prior to filing the petition and are proposing to cram down the value by nearly \$6,000.00.

11. In light of the recent purchase, Wells Fargo Financial Acceptance submits that the replacement value is further supported by the recent purchase price.

12. Wells Fargo Financial Acceptance also submits that the interest rate of 8% is not adequate in light of the highly depreciable nature of the collateral, the relatively short job history of Debtors, the

extraordinary expenses and circumstance of the family and the fact that the payments under the Plan do not cover the depreciation of the Vehicle until nearly 1 year after the filing date.

13. The Plan does not comply with the provisions of Chapter 13.

14. The Plan does not provide Wells Fargo Financial Acceptance with adequate protection of its interest in the vehicle.

15. Movant gives notice that it may, if necessary, call A. Howard or another representative of Wells Fargo Financial Acceptance to testify at the hearing.

16. Movant has incurred \$225 of costs and attorneys fees in connection with this objection that must be included in the secured claim pursuant to 11 U.S.C. Section 506.

17. THIS IS AN ATTEMPT TO COLLECT A DEBT AND ANY INFORMATION WILL BE USED FOR THAT PURPOSE.

WHEREFORE, Wells Fargo Financial Acceptance respectfully requests this Court to enter an order denying confirmation of the Debtor' proposed plan and such other further relief as is just and equitable.

Dated: August 12, 2004

STEWART, ZLIMEN & JUNGERS

By /e/ Bradley J. Halberstadt
Bradley J. Halberstadt (#215296)
Attorneys for Movant
430 Oak Grove Street, Ste. 200
Minneapolis, Minnesota 55403
(612) 870-4100

UNITED STATES BANKRUPTCY COURT
DISTRICT OF MINNESOTA

In re:

Chapter 13 Case

Ernest M., Sr. and Velinda A. Raehsler,

Bky. No. 04-33702

Debtor(s).

Affidavit of Andrew J. Howard

I, Andrew J. Howard, of Wells Fargo Financial Acceptance, declare under penalty of perjury that the following is true and correct to the best of my knowledge, information and belief:

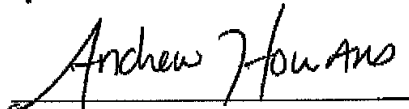
1. Wells Fargo Financial Acceptance has a security interest in the following (the "Collateral"):

2004 Ford Taurus VIN# 1FAPP53U64G124441.

2. \$19,604.94 is the outstanding balance under the contract as of August 12, 2004.
3. \$1,474.89 is the amount of the existing delinquency under the contract.
4. \$19,604.94 is the fair market value of the Collateral.
5. Yes Appropriate insurance has been verified.
6. N/A is the payment default under the Chapter 13 Plan.

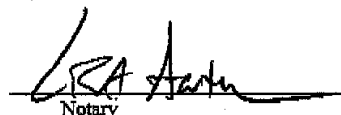
Further your affiant sayeth not.

Dated: 8/12/200



Andrew J. Howard
Bankruptcy Specialist
Wells Fargo Financial Acceptance

Subscribed and sworn to before me on August
12, 2004


Notary



08/12/04 10:07 FAX 952.915.3885

WELLS FARGO ACCEPT BKY

0000

73157
MINNESOTA DEPARTMENT OF PUBLIC SAFETY
DRIVER & VEHICLE SERVICES DIVISION
445 MINNESOTA ST. ST. PAUL, MN 55101
CONFIRMATION OF LIEN PERFECTION - DEBTOR NAME AND ADDRESS

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U.S. Postage
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Permit No. 171
St. Paul, MN

**RAEHSLER ERNEST MARTIN
RAEHSLER VELINDA ALICE
4001 BLACKHAWK RD
EAGAN MN 55122**

MLN430

04 <small>Year</small>	FORD <small>Make</small>	4DTSE <small>Model</small>	G0960S392 <small>Title NR.</small>
1FAFP53U66G124441 <small>VIN</small>	02/21/04 <small>Security Date</small>	NO <small>Rebuilt</small>	

1ST SECURED PARTY

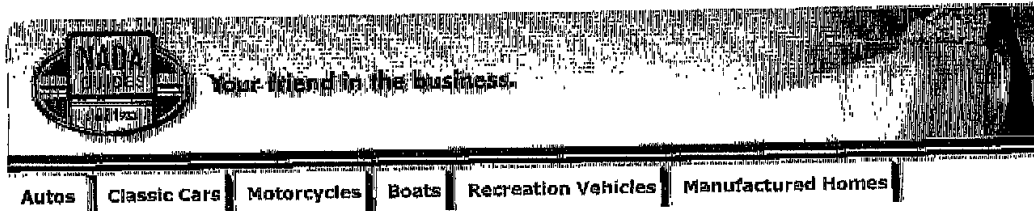
LIEN HOLDER

RETAIN THIS DOCUMENT - See reverse
side of this form for removing this lien.

**WELLS FARGO FINANCIAL ACCPET
PO BOX 250
ESSINGTON PA 19029-0250**



<u>Number</u>	<u>Payment Amount</u>	8.00%	<u>Principal Payment</u>	<u>Balance</u>	(20% Depr.)	<u>Potential Loss</u>
		<u>Interest Payment</u>			<u>Value</u>	
				19,604.94	19,604.94	0
1	0.00	130.70	(130.70)	19,735.64	19,278.19	457.45
2	0.00	131.57	(131.57)	19,867.21	18,956.89	910.32
3	0.00	132.45	(132.45)	19,999.66	18,640.94	1,358.72
4	125.00	133.33	(8.33)	20,007.99	18,330.26	1,677.73
5	125.00	133.39	(8.39)	20,016.38	18,024.75	1,991.62
6	125.00	133.44	(8.44)	20,024.82	17,724.34	2,300.48
7	125.00	133.50	(8.50)	20,033.32	17,428.93	2,604.38
8	125.00	133.56	(8.56)	20,041.87	17,138.45	2,903.42
9	125.00	133.61	(8.61)	20,050.49	16,852.81	3,197.67
10	125.00	133.67	(8.67)	20,059.16	16,571.93	3,487.22
11	396.25	133.73	262.52	19,796.63	16,295.73	3,500.90
12	396.25	131.98	264.27	19,532.36	16,024.14	3,508.22
13	396.25	130.22	266.03	19,266.33	15,757.07	3,509.26
14	396.25	128.44	267.81	18,998.52	15,494.45	3,504.07
15	396.25	126.66	269.59	18,728.93	15,236.21	3,492.72
16	396.25	124.86	271.39	18,457.53	14,982.27	3,475.26
17	396.25	123.05	273.20	18,184.34	14,732.57	3,451.77
18	396.25	121.23	275.02	17,909.31	14,487.03	3,422.29
19	396.25	119.40	276.85	17,632.46	14,245.57	3,386.88
20	396.25	117.55	278.70	17,353.76	14,008.15	3,345.61
21	396.25	115.69	280.56	17,073.20	13,774.68	3,298.52
22	396.25	113.82	282.43	16,790.77	13,545.10	3,245.67
23	396.25	111.94	284.31	16,506.46	13,319.35	3,187.11
24	396.25	110.04	286.21	16,220.25	13,097.36	3,122.89
25	396.25	108.14	288.11	15,932.14	12,879.07	3,053.07
26	396.25	106.21	290.04	15,642.10	12,664.42	2,977.68
27	396.25	104.28	291.97	15,350.13	12,453.35	2,896.79
28	396.25	102.33	293.92	15,056.22	12,245.79	2,810.43
29	396.25	100.37	295.88	14,760.34	12,041.69	2,718.65
30	396.25	98.40	297.85	14,462.50	11,841.00	2,621.50
31	396.25	96.42	299.83	14,162.66	11,643.65	2,519.01
32	396.25	94.42	301.83	13,860.83	11,449.59	2,411.24
33	396.25	92.41	303.84	13,556.98	11,258.76	2,298.22
34	396.25	90.38	305.87	13,251.11	11,071.12	2,180.00
35	396.25	88.34	307.91	12,943.21	10,886.60	2,056.61
36	396.25	86.29	309.96	12,633.24	10,705.15	1,928.09
37	396.25	84.22	312.03	12,321.22	10,526.73	1,794.48
38	396.25	82.14	314.11	12,007.11	10,351.29	1,655.82
39	396.25	80.05	316.20	11,690.90	10,178.77	1,512.14
40	396.25	77.94	318.31	11,372.59	10,009.12	1,363.47
41	396.25	75.82	320.43	11,052.16	9,842.30	1,209.86
42	396.25	73.68	322.57	10,729.59	9,678.26	1,051.33
43	396.25	71.53	324.72	10,404.87	9,516.96	887.91
44	396.25	69.37	326.88	10,077.99	9,358.34	719.64
45	396.25	67.19	329.06	9,748.92	9,202.37	546.55
46	396.25	64.99	331.26	9,417.67	9,049.00	368.67
47	396.25	62.78	333.47	9,084.20	8,898.18	186.02
48	396.25	60.56	335.69	8,748.51	8,749.88	(1.37)
49	396.25	58.32	337.93	8,410.59	8,604.05	(193.46)
50	396.25	56.07	340.18	8,070.41	8,460.65	(390.24)
51	396.25	53.80	342.45	7,727.96	8,319.64	(591.68)
52	396.25	51.52	344.73	7,383.23	8,180.98	(797.75)
53	396.25	49.22	347.03	7,036.20	8,044.63	(1,008.42)
54	396.25	46.91	349.34	6,686.86	7,910.55	(1,223.69)
55	396.25	44.58	351.67	6,335.19	7,778.71	(1,443.52)
56	396.25	42.23	354.02	5,981.17	7,649.06	(1,667.89)
57	396.25	39.87	356.38	5,624.80	7,521.58	(1,896.78)
58	396.25	37.50	358.75	5,266.05	7,396.22	(2,130.17)
59	396.25	35.11	361.14	4,904.90	7,272.95	(2,368.04)
60	396.25	32.70	363.55	4,541.35	7,151.73	(2,610.38)
TOTALS	\$20,687.50	\$5,623.91	\$15,063.59			



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Select Trim > **Vehicle Overview**

ADVERTISING



New 2004 Ford Taurus 4dr Sdn SE



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Invoice Price*: \$18,631

MSRP Price*: \$20,335

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Most Popular Competitors

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[Acura TL](#)

OVERVIEW

—Invoice Price*: \$18,631

MSRP Price*: \$20,335

[Price with Options](#)

Estimated Payment:

\$438/month** [Apply for a Loan](#)

**based on \$1,000 down, 3.9% interest rate, 0.25% sales tax, 48 months

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- [End of Lease Advisor](#)

Special Offers:

Cash Back/Special Financing [view details](#)

—Engine(s):

3.0L/182 155 @ 4900 RPM hp Gas V6

Transmission(s):

4 speed Automatic w/OD [View all Specs](#)

Standard Warranty:

3 years/36,000 miles [More Warranty Info](#)

Airbags:

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ADVERTISING

UNITED STATES BANKRUPTCY COURT
DISTRICT OF MINNESOTA

In re:

Case No.04-33702-GFK

Chapter 13

Ernest Martin Raehsler, Sr. and Velinda Alice Raehsler,

Debtor(s).

***MEMORANDUM IN SUPPORT OF
OBJECTION TO CONFIRMATION***

Wells Fargo Financial Acceptance submits this memorandum of law in support of its objection to confirmation in the above-entitled matter.

FACTS

Wells Fargo Financial Acceptance holds a valid, perfected interest in a 2004 Ford Taurus, vehicle identification number 1FAFP53U64G124441 (the "Vehicle").

The Vehicle was purchased approximately 4 months before the Chapter 13 filing. The balance due to Wells Fargo Financial Acceptance as of the petition date totals \$19,604.94 together with interest accruing at the contract rate of 17.9%. The fair market value of the Vehicle is \$20,335.00.

The Plan, however, provides for (i) Wells Fargo Financial Acceptance's secured claim of \$14,000 with interest accruing at 8%; (ii) total payment on Wells Fargo Financial Acceptance's secured claim of \$16,929.85; and (iii) monthly payments of \$125.00 commencing in month 3 for 8 months and \$396.25 commencing in month 11 for 41 months.

The schedules indicate that Debtor(s) have been employed for 5 months and 2 years, respectively. The majority of the wages are coming from the debtor employed for only 5 months. The household consists of both debtors and 5 dependents. The plan is a 60 month plan. While the home is stated to need repair, only \$100 per month is allocated for this purpose.

DISCUSSION

Pursuant to 11 U.S.C. §1325(a)(5), a plan must distribute deferred cash payments equal to the present value of the secured claim. *Rake v. Wade*, 113 S.Ct. 2187, 124 L.Ed.2d 424 (1993). In this case, the Debtor has proposed payments that do not satisfy Wells Fargo Financial Acceptance's secured claim plus interest.

First, the secured claim is understated. The replacement value of the Vehicle is at least \$20,335.00 – not \$14,000.00 proposed in the Plan. The Debtor(s) purchased this Vehicle approximately 4 months before the case was filed and are proposing that the value of the Vehicle dropped by over \$6,000.00.

Second, the interest rate is understated. *Till* indicates that the risk factor should be added to the prime rate. The Supreme Court was less than clear on what specifically should be used to determine an appropriate risk factor to be added to the prime rate. The plurality discussed the following three issues: (i) the circumstances of the bankruptcy estate; (ii) the nature of the security; and (iii) the duration and feasibility of the Chapter 13 Plan. In this case, all of these factors support a high risk factor.

The circumstances of this bankruptcy estate demonstrate a high risk factor. Debtor(s) filed this case approximately 4 months after purchasing the Vehicle. They are proposing a Plan that makes Movant wait for 3 months prior to receiving a payment and the payments are not enough to cover the interest and depreciation on the Vehicle for nearly 1 full year.

The Vehicle is depreciable collateral with a relatively high value. This newly purchased Vehicle does not have a big equity cushion. While there is a market for disposition, obtaining relief from stay and attendant costs of repossession and sale provide little prospect for recovery of the value of the Vehicle on the date the case was filed.

The Plan doesn't work. This is a maximum term plan and, when the Vehicle is revalued with an appropriate interest rate, there is not enough money to pay the secured claim with interest in 60 months.

There are no long-term jobs of Debtor(s). Admittedly, there are special medical and health circumstances as well. During the 5 years in the Plan, there are indications that the house needs repair – but not a great deal of money is set aside for that purpose. In short, this is a very tight plan and there are few options to cure speed bumps that almost always happen in these cases. In short, the plan is not feasible.

Finally, it does not appear that this case was filed in good faith. Debtor(s) purchased this new vehicle approximately 4 months before the case was filed and are proposing a substantial cramdown of the balance and interest rate. These are the types of facts that justify denial of confirmation for bad faith.

CONCLUSION

For all of the reasons set forth herein, Wells Fargo Financial Acceptance respectfully requests that the Court deny confirmation of Debtor's Chapter 13 Plan.

Dated: August 12, 2004

STEWART, ZLIMEN & JUNGERS

By /e/ Bradley J. Halberstadt
Bradley J. Halberstadt (#215296)
Attorneys for Movant
430 Oak Grove Street, Ste. 200
Minneapolis, Minnesota 55403
(612) 870-4100

U.S. BANKRUPTCY COURT
DISTRICT OF MINNESOTA

In re:

Ernest Martin Raehsler, Sr. and Velinda Alice Raehsler

Debtor(s).

UNSWORN DECLARATION

FOR PROOF OF SERVICE

Bky. No. 04-33702-GFK

Bradley J. Halberstadt, agent of Stewart, Zlmen & Jungers, attorney(s) licensed to practice law in this court, with office address of with office address of 430 Oak Grove Street, Ste. 200, Minneapolis, Minnesota 55403, declares that on the date set forth below, I served the annexed **Objection to Confirmation** upon each of the entities named below by mailing to each of them a copy thereof by enclosing same in an envelope with first class mail postage prepaid and depositing same in the post office at Roseville, Minnesota addressed to each of them as follows:

United States Trustee
Suite 1015
300 South 4th Street
Minneapolis, MN 55415

(Attorney for Debtor(s))
Craig W. Andresen
2001 Killebrew Drive, Ste. 330
Bloomington, MN 55425

(Trustee)
Jasmine Keller
12 S 6th Street Suite 310
Minneapolis, MN 55402

(Debtor(s))
Ernest Martin Raehsler, Sr.
4001 Blackhawk Road
Eagan, MN 55122

Velinda Alice Raehsler
4001 Blackhawk Road
Eagan, MN 55122

And I declare, under penalty of perjury, that the foregoing is true and correct.

Dated: August 12, 2004

Signed: /e/ Bradley J. Halberstadt

UNITED STATES BANKRUPTCY COURT
DISTRICT OF MINNESOTA

In re:

Case No. 04-33702-GFK
Chapter 13

Ernest Martin Raehsler, Sr. and Velinda Alice Raehsler,

Debtor(s).

ORDER

This matter came before this Court for confirmation of the Chapter 13 plan of reorganization of Debtor(s). Appearances were noted in the record. Based upon all the files and records, the Court makes this Order pursuant to the Federal Rules of Bankruptcy Procedure.

IT IS HEREBY ORDERED, That confirmation of the Chapter 13 plan of Debtor(s) is denied.

Dated: _____

Gregory F. Kishel
United States Bankruptcy Judge